



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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Washington, D.C. 20536



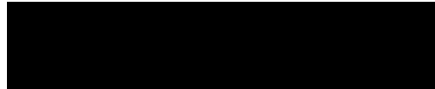
File: EAC-99-237-51942

Office: Vermont Service Center

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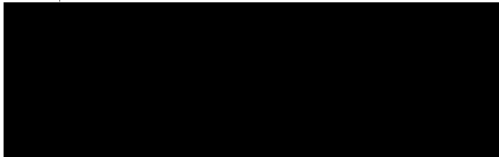
DEC 11 2000

IN RE: Petitioner:  
Beneficiary:



Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER:



Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Mary C. Mulrean, Acting Director  
Administrative Appeals Office

Identifying data removed to  
prevent clearly unwarranted  
invasion of personal privacy

**DISCUSSION:** The immigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is an individual who seeks classification as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4), to serve as a missionary. The director denied the petition determining that the petitioner had failed to establish that the prospective occupation is a religious occupation. The director also found that the petitioner had failed to establish his two years of continuous religious work experience.

On appeal, dated August 14, 2000, counsel argued that the petitioner is eligible for the benefit sought. Counsel indicated that additional evidence would be submitted within 90 days. As of this date, over three months later, no additional evidence has been submitted by counsel.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The first issue to be examined is whether the prospective occupation is a religious occupation.

8 C.F.R. 204.5(m)(2) states, in pertinent part, that:

*Religious occupation* means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

The regulation does not define the term "traditional religious function" and instead provides only a brief list of examples. The examples listed reflect that not all employees of a religious organization are considered to be engaged in a religious occupation. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed of the denomination. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative, humanitarian, or secular. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

The Service therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

In a letter dated August 2, 1999, the petitioner's prospective employer stated that the petitioner:

will be involved in working among the Russian and European Jewish community in the New York Metropolitan area, engaging in the work of evangelism and religious

training. He will lead a weekly bible studies, prayer meetings and engage in one-on-one religious counseling. Additionally, he will speak at churches in the area about the work Jews for Jesus is doing . . .

Additionally, he has received extensive training through our New York branch, taking courses in theology, methods of evangelism, history of Jewish evangelism, preaching (homiletics), and methods of Bible studies.

On May 12, 2000, the director requested that the petitioner submit additional information. In response, the petitioner's prospective employer stated that the petitioner is "qualified to [work as a missionary] by virtue of his Diploma in Theology with merit from Mattersey Hall Bible College." The petitioner's prospective employer listed the petitioner's duties as follows:

- 1) Studying, preparing and leading Bible studies;
- 2) Preparing, organizing and leading evangelistic outreaches;
- 3) Recruiting, training and leading our evangelistic music team, Messiah's Shofar, in tours throughout Europe;
- 4) Prayer;
- 5) Preparing, meeting and conducting religious counseling; and
- 6) Preaching in churches.

The petitioner submitted a photocopy of his diploma from the Mattersey Hall Bible College.

The director determined that the petitioner had not established that his prospective occupation is a religious occupation and denied the petition. Counsel did not address this issue on appeal. The petitioner indicated that he received a diploma from a Bible college; however, the petitioner has not divulged what was required of him prior to receiving this diploma and has not demonstrated how this may have qualified him for the prospective occupation. Further, based on the description of the petitioner's job duties, it appears that any member of [REDACTED] who has a familiarity with the Bible, would be capable of working as a missionary. Accordingly, the petitioner has failed to establish that his prospective occupation is a religious occupation.

The next issue to be examined is whether the petitioner has established that he had two years of continuous work experience in the proffered position.

8 C.F.R. 204.5(m)(1) states, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on August 6, 1999. Therefore, the petitioner must establish that he had been continuously working in the prospective occupation for at least the two years from August 6, 1997 to August 6, 1999.

In a letter dated August 2, 1999, the petitioner's prospective employer stated that the petitioner "has been a Jew for Jesus since 1991." The petitioner's prospective employer indicated that the petitioner had engaged in the previously-described missionary duties. On May 12, 2000, the director requested that the petitioner submit evidence of his work experience during the two-year period prior to filing. In response, the petitioner's prospective employer reiterated the description of the duties that were performed by the petitioner. The petitioner submitted photocopies of Forms W-2 and pay statements provided to him by [REDACTED]

On appeal, counsel indicated that she was attempting to obtain additional evidence of wages paid to the petitioner when he was working abroad. The evidence submitted in support of this petition indicates that the petitioner has been either training to become or working as a missionary throughout the two-year period prior to filing. As was previously discussed, the job engaged in by the petitioner is not a religious occupation. As such, the petitioner has not established that he was continuously engaged in a religious occupation from August 6, 1997 to August 6, 1999. The objection of the director has not been overcome on appeal. Accordingly, the petition may not be approved.

Beyond the decision of the director, the petitioner has failed to establish that he is qualified to work in a religious occupation as required at 8 C.F.R. 204.5(m)(3). As the appeal will be dismissed on the grounds discussed, this issue need not be examined further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.